

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JESSE R. GONZALES,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 2:23-cv-01883-RSL-GJL

ORDER FOR SERVICE AND
ANSWER, § 2254 PETITION

The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate Judge Grady J. Leupold. Petitioner Jesse R. Gonzales is currently incarcerated at the **Stafford Creek Corrections Center** and is subject to the Court's Prisoner E-Filing Initiative pursuant to General Order 06-16.

Petitioner, proceeding *pro se*, filed a proposed Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on December 7, 2023. Dkt. 1. Petitioner did not pay the filing fee or submit an Application to Proceed *In Forma Pauperis* ("IFP"). *See* Dkt. 1. In addition, Petitioner did not sign or date his proposed Petition. *See id.* On December 7, 2023, the Clerk of Court sent Petitioner a letter notifying Petitioner that he had failed to meet the filing fee

1 requirement and had not signed or dated his proposed Petition. Dkt. 2. The Clerk of Court
2 instructed Petitioner to submit the \$5.00 filing fee or an IFP Application. *Id.* The Clerk of Court
3 also attached the signature page of Petitioner's proposed Petition and requested that he sign and
4 return the page. *Id.* Finally, the Clerk of Court warned Petitioner that if he did not respond to the
5 letter by January 8, 2024, the action may be subject to dismissal. *Id.*

6 Petitioner did not respond to the Clerk of Court's letter by January 8, 2024, or pay the
7 filing fee or file an IFP Application; and did not return the signature page of his proposed
8 Petition. *See generally* Dkt. As a result, on February 2, 2024, the Court issued a Report and
9 Recommendation ("R&R") that the case be dismissed without prejudice for failure to prosecute.
10 Dkt. 4.

11 After the R&R was issued, on February 8, 2024, Petitioner filed a corrected Petition and
12 paid the filing fee. Dkts. 6, 7. On March 11, 2024, the District Court issued an Order noting the
13 filing fee was now paid and referred the matter back to the undersigned. *See* Dkt. 8.

14 In light of the District Court's Order (Dkt. 8), the undersigned **WITHDRAWS** the
15 February 2, 2024 Report and Recommendation to dismiss this case for Petitioner's failure to
16 prosecute (Dkt. 4).

17 Further, the Court, having reviewed Petitioner's federal habeas Petition (Dkt. 7), hereby
18 finds and **ORDERS** as follows:

19 (1) The Clerk shall arrange for service, by e-mail upon Respondent and upon the
20 Attorney General of the State of Washington, of copies of: the Petition, any other documents
21 filed in support of the Petition, and this Order. The Clerk shall also direct a copy of this Order
22 and of the Court's *pro se* instruction sheet to Petitioner.
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(2) Within *forty-five (45) days* after such service, Respondent(s) shall file and serve an answer in accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States District Courts. As part of such answer, Respondent(s) shall state whether Petitioner has exhausted available state remedies and whether an evidentiary hearing is necessary. Respondent(s) shall not file a dispositive motion in place of an answer without first showing cause as to why an answer is inadequate. Respondent(s) shall file the answer with the Clerk of the Court and serve a copy of the answer on Petitioner.

(3) The answer will be treated in accordance with LCR 7. Accordingly, on the face of the answer, Respondent(s) shall note it for consideration on the fourth Friday after filing. Petitioner may file and serve a response not later than the Monday immediately preceding the Friday designated for consideration of the matter, and Respondent(s) may file and serve a reply not later than the Friday designated for consideration of the matter.

(4) Filing by Parties, Generally

All attorneys admitted to practice before this Court are required to file documents electronically via the Court's CM/ECF system. Petitioner shall file all documents electronically. All filings must indicate in the upper right hand corner the name of the magistrate judge to whom the document is directed.

Any document filed with the Court must be accompanied by proof that it has been served upon all parties that have entered a notice of appearance in the underlying matter. Petitioner shall indicate the date the document is submitted for e-filing as the date of service.

(5) Motions

Any request for court action shall be set forth in a motion, properly filed and served. Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a

1 part of the motion itself and not in a separate document. The motion shall include in its caption
2 (immediately below the title of the motion) a designation of the date the motion is to be noted for
3 consideration on the Court's motion calendar.

4 (6) Direct Communications with District Judge or Magistrate Judge

5 No direct communication is to take place with the District Judge or Magistrate Judge with
6 regard to this case. All relevant information and papers are to be directed to the Clerk.

7 Dated this 14th day of March, 2024.

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9  A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid black horizontal line.

10 Grady J. Leupold
11 United States Magistrate Judge
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